

CENTER FOR DISABILITY ACCESS
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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Samuel Love,

Plaintiff,

v.

**Destination Maternity
Corporation,** a Delaware
Corporation; and Does 1-10,

Defendants.

Case No.

**Complaint For Damages And
Injunctive Relief For Violations
Of: American's With Disabilities
Act; Unruh Civil Rights Act**

Plaintiff Samuel Love complains of Destination Maternity Corporation, a Delaware Corporation; and Does 1-10 ("Defendants"), and alleges as follows:

PARTIES:

1. Plaintiff is a California resident with physical disabilities. He is substantially limited in his ability to walk. He is a paraplegic who uses a wheelchair for mobility.

2. Defendant Destination Maternity Corporation owned Motherhood Maternity located at or about 230 W. Hillsdale Blvd., San Mateo California, in September 2019.

3. Defendant Destination Maternity Corporation owns Motherhood

1 Maternity ("Store") located at or about 230 W. Hillsdale Blvd., San Mateo
2 California, currently.

3 4. Plaintiff does not know the true names of Defendants, their business
4 capacities, their ownership connection to the property and business, or their
5 relative responsibilities in causing the access violations herein complained of,
6 and alleges a joint venture and common enterprise by all such Defendants.
7 Plaintiff is informed and believes that each of the Defendants herein,
8 including Does 1 through 10, inclusive, is responsible in some capacity for the
9 events herein alleged, or is a necessary party for obtaining appropriate relief.
10 Plaintiff will seek leave to amend when the true names, capacities,
11 connections, and responsibilities of the Defendants and Does 1 through 10,
12 inclusive, are ascertained.

13
14 **JURISDICTION & VENUE:**

15 5. The Court has subject matter jurisdiction over the action pursuant to 28
16 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans with
17 Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

18 6. Pursuant to supplemental jurisdiction, an attendant and related cause
19 of action, arising from the same nucleus of operative facts and arising out of
20 the same transactions, is also brought under California's Unruh Civil Rights
21 Act, which act expressly incorporates the Americans with Disabilities Act.

22 7. Venue is proper in this court pursuant to 28 U.S.C. § 1391(b) and is
23 founded on the fact that the real property which is the subject of this action is
24 located in this district and that Plaintiff's cause of action arose in this district.

25
26 **FACTUAL ALLEGATIONS:**

27 8. Plaintiff went to the Store in September 2019 with the intention to avail
28 himself of its goods and to assess the business for compliance with the

1 disability access laws.

2 9. The Store is a facility open to the public, places of public
3 accommodation, and business establishments.

4 10. Unfortunately, on the date of the plaintiff's visit, the defendants failed
5 to provide accessible sales counters.

6 11. On information and belief, the defendants currently fail to provide
7 accessible sales counters.

8 12. Additionally, one of the facilities, privileges or advantages enjoyed by
9 customers at the Store is an electronic point of sale machine that has a display
10 screen with directions and information for the customer, a card reader to take
11 credit cards and buttons to be pressed. This permits easy and private
12 transaction opportunities to customers at the Store.

13 13. Unfortunately, the display screen is mounted so that it is not visible by a
14 wheelchair user. The information on the display screen is not visible from a
15 viewpoint 40 inches above the floor. Moreover, the display screen is angled
16 away from the viewer and faces the ceiling and the center line of the display
17 screen is located about 45 inches above the floor. On information and belief,
18 plaintiff alleges that this point of sale machine was installed sometime after
19 1995 and is, therefore, subject to California Accessibility Standards in
20 addition to ADA standards.

21 14. Unfortunately, on the date of the plaintiff's visit, the defendants failed
22 to provide accessible electronic point-of-sale machines that customers can use
23 to swipe their credit cards.

24 15. On information and belief, the defendants currently fail to provide
25 accessible electronic point-of-sale machines that customers can use to swipe
26 their credit cards.

27 16. Plaintiff personally encountered these barriers.

28 17. By failing to provide accessible facilities, the defendants denied the

1 plaintiff full and equal access.

2 18. The lack of accessible facilities created difficulty and discomfort for the
3 Plaintiff.

4 19. The defendants have failed to maintain in working and useable
5 conditions those features required to provide ready access to persons with
6 disabilities.

7 20. The barriers identified above are easily removed without much
8 difficulty or expense. They are the types of barriers identified by the
9 Department of Justice as presumably readily achievable to remove and, in fact,
10 these barriers are readily achievable to remove. Moreover, there are numerous
11 alternative accommodations that could be made to provide a greater level of
12 access if complete removal were not achievable.

13 21. Plaintiff will return to the Store to avail himself of its goods and to
14 determine compliance with the disability access laws once it is represented to
15 him that the Store and its facilities are accessible. Plaintiff is currently deterred
16 from doing so because of his knowledge of the existing barriers and his
17 uncertainty about the existence of yet other barriers on the site. If the barriers
18 are not removed, the plaintiff will face unlawful and discriminatory barriers
19 again.

20 22. Given the obvious and blatant nature of the barriers and violations
21 alleged herein, the plaintiff alleges, on information and belief, that there are
22 other violations and barriers on the site that relate to his disability. Plaintiff will
23 amend the complaint, to provide proper notice regarding the scope of this
24 lawsuit, once he conducts a site inspection. However, please be on notice that
25 the plaintiff seeks to have all barriers related to his disability remedied. See
26 *Doran v. 7-11*, 524 F.3d 1034 (9th Cir. 2008) (holding that once a plaintiff
27 encounters one barrier at a site, he can sue to have all barriers that relate to his
28 disability removed regardless of whether he personally encountered them).

I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS WITH DISABILITIES ACT OF 1990 (On behalf of Plaintiff and against all Defendants.) (42 U.S.C. section 12101, et seq.)

23. Plaintiff re-pleads and incorporates by reference, as if fully set forth again herein, the allegations contained in all prior paragraphs of this complaint.

24. Under the ADA, it is an act of discrimination to fail to ensure that the privileges, advantages, accommodations, facilities, goods and services of any place of public accommodation is offered on a full and equal basis by anyone who owns, leases, or operates a place of public accommodation. See 42 U.S.C. § 12182(a). Discrimination is defined, inter alia, as follows:

- a. A failure to make reasonable modifications in policies, practices, or procedures, when such modifications are necessary to afford goods, services, facilities, privileges, advantages, or accommodations to individuals with disabilities, unless the accommodation would work a fundamental alteration of those services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).
- b. A failure to remove architectural barriers where such removal is readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are defined by reference to the ADA Standards.
- c. A failure to make alterations in such a manner that, to the maximum extent feasible, the altered portions of the facility are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs or to ensure that, to the maximum extent feasible, the path of travel to the altered area and the bathrooms, telephones, and drinking fountains serving the altered area, are readily accessible to and usable by individuals with disabilities. 42 U.S.C. § 12183(a)(2).

1 25. When a business provides facilities such as sales counters, it must
2 provide accessible sales counters.

3 26. Here, accessible sales counters have not been provided.

4 27. When a business provides facilities such as electronic point-of-sale
5 machines, it must provide accessible electronic point-of-sale machines.

6 28. Here, accessible electronic point-of-sale machines have not been
7 provided.

8 29. The Safe Harbor provisions of the 2010 Standards are not applicable
9 here because the conditions challenged in this lawsuit do not comply with the
10 1991 Standards.

11 30. A public accommodation must maintain in operable working condition
12 those features of its facilities and equipment that are required to be readily
13 accessible to and usable by persons with disabilities. 28 C.F.R. § 36.211(a).

14 31. Here, the failure to ensure that the accessible facilities were available
15 and ready to be used by the plaintiff is a violation of the law.

16
17 **II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL**
18 **RIGHTS ACT** (On behalf of Plaintiff and against all Defendants.) (Cal. Civ.
19 Code § 51-53.)

20 32. Plaintiff repleads and incorporates by reference, as if fully set forth
21 again herein, the allegations contained in all prior paragraphs of this
22 complaint. The Unruh Civil Rights Act (“Unruh Act”) guarantees, inter alia,
23 that persons with disabilities are entitled to full and equal accommodations,
24 advantages, facilities, privileges, or services in all business establishment of
25 every kind whatsoever within the jurisdiction of the State of California. Cal.
26 Civ. Code § 51(b).

27 33. The Unruh Act provides that a violation of the ADA is a violation of the
28 Unruh Act. Cal. Civ. Code, § 51(f).

1 34. Defendants' acts and omissions, as herein alleged, have violated the
2 Unruh Act by, inter alia, denying, or aiding, or inciting the denial of, Plaintiff's
3 rights to full and equal use of the accommodations, advantages, facilities,
4 privileges, or services offered.

5 35. Because the violation of the Unruh Civil Rights Act resulted in difficulty,
6 discomfort or embarrassment for the plaintiff, the defendants are also each
7 responsible for statutory damages, i.e., a civil penalty. (Civ. Code § 55.56(a)-
8 (c).)

9
10 **PRAYER:**

11 Wherefore, Plaintiff prays that this Court award damages and provide
12 relief as follows:

13 1. For injunctive relief, compelling Defendants to comply with the
14 Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the
15 plaintiff is not invoking section 55 of the California Civil Code and is not
16 seeking injunctive relief under the Disabled Persons Act at all.

17 2. Damages under the Unruh Civil Rights Act, which provides for actual
18 damages and a statutory minimum of \$4,000 for each offense.

19 3. Reasonable attorney fees, litigation expenses and costs of suit, pursuant
20 to 42 U.S.C. § 12205; and Cal. Civ. Code §§ 52.

21
22 Dated: October 18, 2019

CENTER FOR DISABILITY ACCESS

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24 By: 

25 _____
26 Amanda Seabock, Esq.
27 Attorney for plaintiff
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